

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
WATER QUALITY STANDARDS AND)
EFFLUENT LIMITATIONS FOR THE) R08-9
CHICAGO AREA WATERWAY SYSTEM) (Rulemaking – Water)
AND LOWER DES PLAINES RIVER:)
PROPOSED AMENDMENTS TO 35 ILL.)
ADM. CODE 301, 302, 303 AND 304)

NOTICE OF FILING

TO: Mr. John T. Therriault Ms. Marie E. Tipsord
Assistant Clerk of the Board Hearing Officer
Illinois Pollution Control Board Illinois Pollution Control Board
100 West Randolph Street 100 West Randolph Street
Suite 11-500 Suite 11-500
Chicago, Illinois 60601 Chicago, Illinois 60601
(VIA ELECTRONIC MAIL) (VIA FIRST CLASS MAIL)

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board RESPONSE IN SUPPORT OF CITGO'S MOTION FOR A HEARING ON THE IMPACT OF THE LITIGATION BEFORE THE UNITED STATES SUPREME COURT RELATING TO THE MIGRATION OF ASIAN CARP THROUGH THE CHICAGO SANITARY AND SHIP CANAL on behalf of the Illinois Environmental Regulatory Group, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

Dated: January 25, 2010

By: /s/ Alec M. Davis
Alec M. Davis

Alec M. Davis
General Counsel
Illinois Environmental Regulatory Group
215 East Adams Street
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**RESPONSE IN SUPPORT OF CITGO’S MOTION FOR A
HEARING ON THE IMPACT OF THE LITIGATION BEFORE THE
UNITED STATES SUPREME COURT RELATING TO THE MIGRATION
OF ASIAN CARP THROUGH THE CHICAGO SANITARY AND SHIP CANAL**

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP (“IERG”) by and through its attorney, Alec M. Davis, and pursuant to 35 Ill. Admin. Code §§ 101.500(d) and 101.300(c), hereby responds to the Motion for a Hearing filed by Citgo Petroleum Corporation and PDV Midwest LLC (“Citgo”) on January 7, 2010, and served upon IERG on January 11, 2010. Motion for a Hearing on the Impact of the Litigation Before the United States Supreme Court Relating to the Migration of Asian Carp Through the Chicago Sanitary and Ship Canal, *In the Matter of: Water Quality Standards and Effluent Limitations for the Chicago Area Waterway System and Lower Des Plaines River: Proposed Amendments to 35 Ill. Adm. Code 301, 302, 303 and 304*, R08-9 (Ill.Pol.Control.Bd. Jan. 7, 2010) (hereafter “Motion;” rulemaking hereafter cited as “R08-9”).

I. INTRODUCTION

IERG is a not-for-profit Illinois corporation affiliated with the Illinois Chamber of Commerce. IERG is composed of fifty-two (52) member companies that are regulated by governmental agencies that promulgate, administer or enforce environmental laws,

regulations, rules or other policies. Several of IERG member companies have facilities located along, and discharging to, the waterways subject to this rulemaking. As such, IERG has participated in this rulemaking, and IERG supports Citgo's Motion with regard to the need to investigate the current status of third party litigation before the United States Supreme Court ("Supreme Court"), and encourages the Illinois Pollution Control Board ("Board") to grant Citgo's request to "hold an additional hearing for purposes of receiving information on the current 'uses' of the Ship Canal, how those uses might be changed by the recent litigation filed before the Supreme Court, and to consider this information in managing this docket going forward." Motion at 1. IERG believes it is unlikely that the potential impact of the Asian carp and any actions taken to halt the migration and eradicate the invasive species will only be limited to the Chicago Sanitary and Ship Canal ("CSSC"). Thus, any hearings held on these issues should consider the impact not only on the CSSC, but also on the other segments of the Chicago Area Waterways ("CAWS"), as well as the Lower Des Plaines River ("LDPR").

II. POTENTIAL FOR RULEMAKING GOALS TO CONFLICT WITH ASIAN CARP MITIGATION

The purpose of performing a use attainability analysis ("UAA") is to determine "existing and potential uses of the waterway" in order to establish water quality standards to achieve the goals of the Clean Water Act. Statement of Reasons, R08-9 at 23 and 3. The water quality standards being proposed in this rulemaking are standards the Illinois Environmental Protection Agency ("Illinois EPA") believes protect aquatic life. Hearing, R08-9 at 100 (Ill.Pol.Control.Bd. Jan. 29, 2008) (hereafter cited as "Tr."). The Illinois EPA has acknowledged that it did not consider whether improving water quality

standards would increase the chances of invasive species migrating to Lake Michigan. Tr. at 100. Although the Illinois EPA considered the engineered electrical barrier's impact to recreational uses, which has no bearing on aquatic use designations, it is not clear how or whether the Illinois EPA considered the installation of the electrical barrier when addressing aquatic use designations. *Id.* at 83.

Preventing the migration of the Asian carp into the Great Lakes is a priority for various parties as evidenced by the construction of the electrical barriers, the recent fish kill during the maintenance outage of the electrical barrier, and the litigation before the Supreme Court. *See generally* Motion; *see also* Motion at fn 2. It remains uncertain what additional measures ultimately will be taken to prevent the Asian carp's migration to Lake Michigan. However, the potential for those measures to impact the objectives of this rulemaking are a reality under the present situation. The resulting uncertainty with regard to the potential impact of the Asian carp and any responsive actions to prevent its migration to the Great Lakes warrants additional discussion.

III. CONCLUSION

IERG has participated in this rulemaking because its members will be directly impacted by the use designations and water quality standards developed during this proceeding. In order to ensure that the record in this rulemaking is complete, the Board should hear testimony on the migration of the Asian carp, including but not limited to testimony on the actions that will be taken to combat the migration of the Asian carp to the Great Lakes, the Illinois EPA's consideration of invasive species in developing the proposed uses and water quality standards, and whether the proposed uses and water quality standards should be revised to consider the impact of the Asian carp on the

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various waterways. Oral testimony on these issues, rather than the submission of written comments, is necessary to allow for questioning by the Board and parties and will more fully develop a complete record.

IERG appreciates the opportunity to present this response to Citgo's Motion and encourages the Board to grant the motion and hold hearings on the impact of the Asian carp on the CAWS and LDPR.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

Dated: January 25, 2010

By: /s/ Alec M. Davis
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CERTIFICATE OF SERVICE

I, Alec M. Davis, the undersigned, hereby certify that I have served the attached RESPONSE IN SUPPORT OF CITGO'S MOTION FOR A HEARING ON THE IMPACT OF THE LITIGATION BEFORE THE UNITED STATES SUPREME COURT RELATING TO THE MIGRATION OF ASIAN CARP THROUGH THE CHICAGO SANITARY AND SHIP CANAL upon:

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via electronic mail on January 25, 2010; and upon:

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by depositing said documents in the United States Mail, postage prepaid, in
Springfield, Illinois on January 25, 2010.

By: /s/ Alec M. Davis
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IERG:001/Fil/R Dockets /R8-09/NOF-COS -- Response to Citgo Mtn